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Kenya Research project by Robert M. Press [see: Press, Robert M. (2006) *Peaceful Resistance: Advancing Human Rights and Civil Liberties*. Aldershot, U. K.: Ashgate.

Transmitted to LOC April 2009

Interview conducted and recorded by Robert M. Press (bob.press@usm.edu; press.bob@gmail.com)

Location of interview: Nairobi, Kenya; in office of interviewee

Date of interview: August 15, 2002.

Interviewee: Martha Karua. Kenyan human rights activist and attorney; member of Parliament at the time of the interview. She later became a senior official in the new government headed by Mwai Kibaki and was a vocal critic of those who challenged the widely-discredited 2007 re-election of President Kibaki.

Note: Q =interviewer (Robert Press); A= respondent (interviewee): Martha Karua The interview was tape recorded. Transcription includes occasional, parenthetical tape counter numbers made by transcriber. Double ?? indicates uncertainty of the detail cited or unclear words on tape. This is a partial transcript (summary points). Interviewee's remarks are in quotations. Bracketed information are notes by the interviewer; underlined portions were added by interviewer for emphasis.

[Biographical notes on interviewee:

Lawyer/politician

Law degree (LLB) U. of Nairobi

ethnicity: Kikuyu

Protestant: ACK

Party: 1992 with original FORD. After the party rigged her out of the nomination to Parliament, she said, she switched to the Democratic Party (DP) and won elections in 1992 and 1997.]

[Hon. Karua sat at a desk crowded with files, in a rented apartment converted into her offices. A number of people sat in what would have been the living room, probably waiting to see her. She had cancelled the appointment at the last minute via an international call from Uganda, where she had been asked to go by the Kenyan Parliament to attend a meeting on the treatment of AIDS, one of the topics she follows as an MP. But in the late 1980s and especially in the early 1990s as a young law student at the University of Nairobi, she became very active in human rights cases that challenged the government's authoritarian powers. It was an interest that would involve her closely with some of Kenya's most daring human rights activists in a chess game with the police that helped bring international attention to the abuse of human rights by the Kenyan government. Much of the day-to-day planning by the activists took place in what Hon. Karua says was their "war room," explained below.]

[Begin selections from the interview]

A. "Yes there's been [positive] change in some areas, and perhaps change for the worse in others – like police brutality. But there has been some change...especially with regards to freedom of expression, freedom of assembly. There has been tremendous change.

[SA-] In '87, people could be arrested and jailed for even expressing the view that we need a change, either of government or the way things were done. I do remember....Around 1990, a man was

prosecuted for wearing his son's jacket, which bore a Victory sign. And people could be harassed by the police for flashing the victory sign. [The two-fingered V became the symbol for multi-party politics; one could participate in symbolic politics simply by waving the Victory-cum-multi-party sign in public, and indeed one government minister threatened that those waving such a sign should have the fingers cut off. 1990 May police pick up four Kenyans who display two-finger salute (pro multi-party): Held for 24 hours. Gitobu Imanyara issues press statement challenging the arrests as unlawful.] "The two-fingered salute was interpreted as meaning multi-party. Even the mere expression of the wish that Kenya should have a multi-party system was criminalized."

"What I'm saying, yes, we have moved. We not only have many political parties but people everywhere, in the villages and everywhere, are more and more expressing their opinion; even in the presence of government officials...The response of government officials may be hostile to expression of opinion, to questioning of their actions. But the fact that more and more people are doing it, shows that we have gained some democratic space, and some respect for the right to free expression and assembly."

[Negative aspects: the "culture of impunity."]

(22) "We have seen the government interrupting legitimate political activity...of opposition activists and of people in the ruling party who are seen as rebels. So the culture of impunity within the institution of state and the law enforcement agencies: its worse. And we have seen violent breakup of demonstrations; violent break-up of meetings; assault – physical assault on people when such meetings are being broken up, including Members of Parliament. We've often seen violence orchestrated or countenanced by the state during elections, even including during by-elections."

[**Ethnic clashes in 1991-1992, and 1997.**] "And we are hearing that even now there may be violence orchestrated ahead of the forthcoming general elections. But I'm talking also of violence during by-elections. A few years ago, when we had the election as the result of the death of the late Magara [spelling], a by-election that saw his brother elected to replace him, there was violence orchestrated by the ruling party to the extent where the Honorable [] Magara, who replaced his last brother was actually assaulted to the extent of being hospitalized. They [??] meant to kill him. He was a candidate and youths of the ruling party [KANU] assaulted him. A returning officer [polling official], who was a lady, was assaulted by an assistant minister. It was widely reported in the paper. No action was taken. The Electoral Commission did not press for charges, and the whole matter was hush-hush. So we've also seen this kind of impunity."

Q. Describe the state of Kenyan politics today, with the outer ranges being "democracy" and "police state."

A. (52) "We are somewhere between those two, where the citizen is struggling to enjoy his basic rights and the state, when ever it suits them, are doing their best to curtail the enjoyment of any of those freedoms."

[Repression in 2002]

SA- TACTIC. Attempted intimidation of critics before an election.

[She cited the **August 2002 jailing of Gatabaki**, former editor of the now-defunct Finance magazine, who was jailed in August 2002 for an article [cover story] published in Finance in 1997 which alleged that Moi had ordered ethnic violence (the "Molo massacre," as Hon. Karua recalled it)].

"Gatabaki appeared in court without his lawyer, James Orenge, a Member of Parliament and presidential aspirant whose unusual absence was not explained. Gatabaki refused to recant the article

and insisted it was the truth. He was sent to jail but released just five days later by President Moi, ostensibly on medical grounds. His trial had been delayed five years, then suddenly concluded shortly before the 2002 presidential elections. The way I interpret it as a politician and a lawyer is that it [the jailing] is intended to create fear in members of the opposition so that as we campaign we realize that should we point out certain ills of the government we could end up in jail instead of in Parliament. ...Gatabaki has been picked, as a member of the press. This warning...is also to the media where you publish what they say. The government is trying to control ...the level of debate. So it [the jailing] is both aimed at the media and members of the opposition. And look at the ridiculous move – the President pardoned Gatabaki last night. The President has this power to reduce the sentences, so he used his power of remission and ordered Gatabaki released yesterday. The significance of that is he wants to come out as the Merciful One. And also the total picture is that he is really the powerful one. He can put you in, he can put you out. Your life depends on him. So we better beware. And I'm really hoping Gatabaki is going to proceed with his appeal." [He did.]

[Press freedom still limited. Among other things, she was attorney for Mirugi Kariuki, who was re-arrested in (year) along with Koigi Wamwere in a case that are received considerable international publicity. [Examples?]. She made the point that the Nairobi Law Monthly made a better coverage of human rights than the newspapers. Karua charged that newspapers then, however, were doing a better job at reporting human rights abuses than today.]

[Freedom of press lacking in 2002.]

[**SA-(98). TACTIC** – not mentioned but relevant here: Intimidation of the critical press. Act passed in 2002 provided for very steep bonds against libel of public officials [??] [Get details of law] “I have actually found a reversal in freedom of the press. Self censorship and corruption is at its peak in Kenya and it has destroyed our press. I no longer think we have free press. Both the electronic and print media, to me, are working as a propaganda tool for the state....They don't go deep into the issues....Everyday they are harping on the shortcomings of the opposition....their minds become dull when it comes to the ruling party....They're glorifying the President's choice of candidate [for President, Uhuru Kenyatta, son of Kenya's first President, Jomo Kenyatta, never elected to a political post [verify]. The press was better during the single party years [at least in the run-up to the first multi-party elections in years in 1992].

[Karua's activism:]

Q. What did you do to advance human rights?

[HR A. (126) (Treason trial of Koigi Wamwere and others, in which she represented Mirugi Kariuki, another of the seven?? defendants).

-kept filing applications citing constitutional rights violated, prison conditions, right to a fair trial, etc.]

[**HR] TACTIC & IMPACT** The activists' tactic appears to have been delay – giving the Kenyan and international human rights activists enough time to publicize the case and challenge the government to let them go, which they eventually did – after several years...] “which I still thought was good because if we had not had those legal interventions, the battles in court, we'd have had a hurried trial, ending up in conviction – and the death sentence possibly. It was in their interest [the defendants'] to keep on making as many interventions as we could, and to delay the trial to enable the campaign for the release to gain momentum. We actually did buy time and we'd file one application after another. But we would

discuss and make sure the applications were actually not frivolous. That's why the state one two or more issues set constitutional benches [a panel of judges] to hear the matter...We even applied for some of the judges to disqualify themselves."

[Issues represented: prison conditions, fair trial; access to exhibits to prepare the case. For example, the defense attorneys kept asking for the Kenya Patriotic Force [check name??] manifesto upon which the government put so much weight.]

"They claimed the KPF manifesto was so treasonous in its statement ...and they never gave it to us until almost two years later, only to realize it was the most, most innocent document, couched in very, very ordinary language; that it was indeed ridiculous to base charges on the document. The only word appearing in the document you could slightly associate with force is the word used in a different context: to say we shall fight for our rights. Fighting does not mean use of force. It means also to campaign...We could have made an earlier motion for dismissal of charges but they did not disclose [the document]. [Finally the state dropped the charges. The prosecuting attorney, Chunga, was later made Chief of the High Court.] [His] role was more persecution than prosecution."

Co-defendants included Kariuki, Rumba Kinuthia (attorney), Haround [??] Thungu wa Kaba [spelling??] Shamalla was defending Koigi."

[Karua's early involvement:

From 1982-1987 she was a magistrate (judge), resigning when in line to move to the High Court. She left that post and set up her law firm and "immediately entered into controversy." It was a year in which government torture was reaching a climax in the wake of the so-called trials of those accused of being in Mwakenya, a term broadly applied by Moi in his bid to crack down on dissidents in general.]

[ORGANIZATION:]

[SA-] TACTIC of Government: take over Law Society of Kenya. It had already affiliated the trade movement and the women's movement, making them part of the government structure.]

[HR. Counter Tactic of young Turks in LSK: resist.]

190: [The Young Turks fought the chairmanship of Fred Odjambo (spelling??) "because we felt he had been compromised by the state." [Her activism began with her entering the Council executive committee of the Law Society, when Muite was chair.]

[Chess Game]THEORY

Chain of events: LSK speaks out with church

Govt. seeks to co-opt it as it had other groups

The take-over efforts strengthens resistance from young Turks in LSK

After chairmanship of a co-opted attorney, Muite elected chair of LSK

Having failed to co-opt LSK, the govt. then seeks to use the courts to silence it.

LSK sues the government – and eventually wins. Under what conditions of domestic and/or international pressure?

Muite goes on to become one of the organizers of the multi-party movement and continues to draw the physical repression of the government through 1997, when he again is active in seeking constitutional reforms.]

[The government had its eye on controlling the Law Society because it was] "one of the few organizations with a voice to criticize the government. Other than the church, it was only the Law

Society occasionally issuing statements. So the government did express a desire – the President actually said publicly that he is moving to affiliate the Law Society.

“When we saw the chairman [Odjambo 1990-1991. Check spelling & dates??] starting to get [government] appointments and certain things occurring, as young lawyers, we felt ‘no.’ ... We felt we needed to protect our profession. And this did highlight to us that you can not practice law in a vacuum, that the politics of the day can actually affect your profession. So it [the government’s challenge] actually drew us out of our ‘professional ghetto’” [a term she attributed to the late Bishop Okullu who had apparently called on attorneys to get out of their ghettos...and worry about the larger picture.]

[Kenyan activist attorney Paul Muite made a similar point when asked why he became an activist; that the government was ruining the rule of law upon which his profession stood.]

[Snowballing effect of activism. LSK young Turks “revolutionize” FIDA, another group that became active in human rights in the 1990s.]

[restarted counter at 00]

[Forums evaluate Kenya’s human rights].

“I became active on the national scene. [FIDA – the Federation International de Advocates (check the French acronym??) “was not that vocal. In fact we revolutionized FIDA in the 90s also. As a member of ICJ I was quite active. This organization (ICJ) would hold forums to evaluate the country’s record in human rights, democracy and what was going on.” [She ran some of these forums.]

[Karua’s activism]

[TACTIC: A court boycott, campaign wins release of detainees with help of international organizations

“Mohammed Ibrahim [northeastern], Gitobu Imanyara, and John Khaminwa were detained by the state [in 1990] for performing their duties. We filed habeas corpus. Actually it was Rumba Kinuthia, who was later to be charged with treason who filed it; we filed it in the name of his law firm. I was very new in practice. We went to court for them. We were new; I was new in practice then. I remember Pheroze Nowrojee finding us outside the court and coming in to help us and to lead us. He really rescued us; he came in to give us guidance and to boost our matter and also leading us in court. [He was one of the attorneys.] He led us in a very gallant manner. We did the matter. We also made a very active campaign of collecting signatures, writing statements and calling for the lawyers to boycott the court for three days. [Why ??] The boycott was partially successful, but I believe this daily activism [depended] on the attention of these lawyers.”

[Cumulative impact: domestic/international.] “The state, acted in an unprecedented manner: they were released in 21 days. It was there [the impact]. And daily we were doing nothing else. The government was not used to this. And we kept on getting in touch with international human rights organizations, so the government was receiving piles, piles of letters, faxes. And within twenty-one days they were released.

And we did the same thing in the treason trial. We were completely in touch with human rights organizations all over the world. So we can not say it was just our effort as lawyers. It was the cumulative effort of the local and international human rights groups.”

[SA- Government TACTIC: Cripple the ‘enemy;’ use the courts to try to silent the Law Society of Kenya]

“The government was getting very unhappy with the Law Society [of Kenya: LSK]. So the government sponsored four lawyers to file a case against the Law Society when I was in the Council [when government critic Paul Muite was elected chair of LSK]. We were enjoined as Council Members of the Law Society...against speaking politics...That injunction was amorphous because what is politics? How do you tie that with our rights under the constitution? Again, anytime I speak, am I now speaking to you as a member of Parliament [names her district], as Martha the lawyer, or just as another human being? You can not tell me to speak politics as a member of the Law Society. I can speak my mind anywhere, anytime. So we used to speak and make statements as issues arose. And then we were tried for contempt of court. And the government was really hell-bent on jailing us, to stop this dissent.”

[SA -+Domestic and international pressure saves the LSK. Moi? avoids imprisoning dissidents in the face of international confrontation.]

68: “Because of the outcry, locally and internationally, when the President went to the Commonwealth heads of state meeting at Harare [year?? She thinks 1990; verify] he was confronted by human rights groups demonstrating. It was an embarrassment for the meeting, and we do believe it must have been impressed upon him in Harare that he couldn’t go on the way he was going. There were demonstrators in the streets, organized by human rights groups. I think they were more than from Zimbabwe because this was a Commonwealth heads of state meeting. And because of the violations happening [in Kenya], human rights groups had followed the trail there [of President Moi] to confront [him]. [Karua said this was the work of international human rights groups. [Verify; which ones??] It saved us, actually, because the ruling was given while he was in Harare – against us on the contempt charges. It [the court proceedings] was adjourned once and we thought the directions could have come from there [from President Moi in Harare]. And the judge, Justice Mwera [spelling?] fined us, without giving an option of imprisonment. He fined us each 10,000 [Kenya shillings: how much at that time, 1990?]. He ordered that our properties were to be attached if we didn’t pay. We could have gone in [to prison]. But you can see they were so careful because they thought we might refuse the fine and go in. They refused to give that option. Normally it’s a fine and if you don’t pay you serve [prison time]. I have even heard of such a sentence thereafter. If you don’t pay, we’ll attach you: it became like a civil matter now. The option is jail. After all, the motion before the court was committal to jail for six months.”

Q. Was there any plan to go to jail if you were found guilty?

A. “No, I don’t think so. It’s the government – because we had been outspoken we represented the case ourselves. We were represented, actually by [Pheroze] Nowrojee and others, but at some stage we represented ourselves. And we were making defiant statements because we were insisting that we had the right to say what we said. So I think they feared that we may refuse to pay the fine and serve. Obviously I wouldn’t want to serve. [Mandela said the same thing; but he also said he was prepared to, in his trial speech. Karua and the others had faced jail time for] commenting on topical issues. And the Law Society Act [??] mandates [LSK] to assist the government in the administration of justice and upholding the rule of law. So it would be actually wrong, and it would be a dereliction of duty if the Law Society failed to point out where the government is not applying the law properly or is abusing the rights of others.”

[The Chess Game: Note: Gandhi, in South Africa, had refused to pay a reduced fine of only a trifle and chose instead to go to prison, well aware that imprisonment would help spur the campaign [against?]. The Kenya case provides an example of the Chess Game of politics, with the authoritarian government first trying to intimidate the dissenters then, failing that, to jail them. But when international

pressure and the media spotlight expose the Game, the authoritarian leader backs off, not anxious to suffer the added negative publicity of jailing dissenters, especially outspoken ones who stand for the rule of law.]

Q. I/O Was she acting as an individual or as a member of an organization?

A. “We acted in both capacities. We would issue statements at monthly meetings as Council members of the Law Society, but beyond that we would issue statements as people with common views where we would draw [up] statements and circulate [them] for signature – as a lawyer. Because we had not circulated statements as business people; it was within the Law Society, but I wasn’t doing that as a Council member. I was doing that as a person who feels I have got to do something.

[Karua signed statements of the LSK, but she also signed statements issues by individual attorneys, as many as 12, as few as two.] Coincidentally, at least four or five Council members would be on [those] statements. [Paul] Muite was very active; [Japhet] Shamalla was very active: he was in the Council; GBM Kariuki was active; I was active; Charles Nyachae, Akabi [??]. We had a very, very good Council, members of the Law Society who were in Nairobi mainly [UB = urban bias]. The majority of them [the LSK Council members] would sign those statements.”

Q. Was this one of the most active LSK Councils ever?

A. [TACTIC: go public with dissent; breaking the wall of silence and fear.]

“Let me tell you, it was really vibrant. Then we also had a very active membership. So some statements could even have up to 43 signatures.” [These were not issued in the name of LSK but in the name of the individual lawyers who were members of LSK]

Q. Was the ‘individual’ approach to signing statements simply a way around the government’s attempted banning of the LSK as an organization from making political statements while acting with the strength, coordination and cooperation of the other members?

160. A. “You are absolutely right. We even discussed that.”

[WA) Women’s role underplayed in LSK battles.

TACTIC: force a reluctant institution to become active in human rights (LSK under Ojiambo)

175. “The time we were requisitioning for a general meeting – that’s before Muite became Chairman – to remove [Fred?] Ojiambo [spelling?; date 89?], that campaign was actually spearheaded mainly by women. If you go back and get even newspaper copies of the names that would be on the requisition there would be very many women and a few men, and you will find my name and Martha Koome’s [spelling?] topping the list. I remember one day my father asking me – am I becoming a ring leader? [laughs] And then we’d circulate the statements and we kept on getting sued [by the government??] to be stopped from convening the meeting. The Council would refuse to convene a meeting...The Professional Centre [the building where the LSK offices were located] would refuse to give us the space [to meet]. I remember we used to book the meeting at Intercontinental [Hotel in Nairobi]. They never allowed it [the LSK members’ meeting] to go on. One day when the government realized that the meeting was actually going to go on...in spite of the injunction [against such a meeting], the police went and cowed the general manager [of the Intercontinental], who now returned my check, which I had paid for the venue with. We had actually vowed to sue them [the hotel], but we thought we’d be chasing too many [targets] [laughs]. It actually was getting the government very, very uncomfortable. The fact that you can even come to threaten hoteliers so that we don’t meet. So it [the **TACTICS** of the (WA) women in LSK] was paying dividends [what?]. They [the government] were under a lot of pressure.”

Q. Were these meetings defacto meeting of LSK?

A. “Yes. [It] was going to be a serious LSK meeting where we could not vote to remove the chairman. So Ojiambo was protected by the courts... for a whole year to remain chairman, until his term was over.”

Q. Was Ojiambo the government’s favorite as chairman?

200 A. “We elected Ojiambo with a landslide, willingly. But then now when he started looking like he’s getting too comfortable with the state, and looking like he’s compromising our interests. People got very uncomfortable. Immediately [after] he won the chairmanship, he was named a Director of the Consolidated Bank. He’s still a Director, by the way. You see now, once you start moving towards the government and you’ll be required to make sometimes critical statements where they go wrong, then you are compromised. [Consolidated] was a government bank formed to take care of the collapsing banks which had actually helped to collapse politically by the government [in the so-called Goldenberg scandal].

So our problem then, immediately during Ojiambo’s time, that is when Ibrahim, Khaminwa and Imanyara were detained. The Law Society was not making a statement; the Law Society was doing nothing. So a meeting was convened at the Professional Center because we were asking them: why aren’t you making a statement? Lawyers have been arrested because of doing their professional work. What is happening? Those were the indicators that the government had compromised the leadership of [LSK]

230. We had a Council meeting which was chaired by the then-Vice [chair of LSK] Lawrence Gitau [spelling[?]]. I can’t remember how many we were: a group of lawyers. We went to the Law Society to St. John’s Gate[?] to wait for them to finish the meeting [of the LSK Council] and tell us what they have decided? And tell us whether they are coming out to the press. We went and waited there because we wanted to know what our Council [was] doing. We were getting quite aggressive in our activism. When they learnt we were out there, they called the police. And the police came and surrounded St. John’s gate [laughs]. We were not roughing anybody up; but we wanted to know: have you decided? We wanted to confront them. So they came out. Ojiambo didn’t talk to us. His Vice [chair], Lawrence Gitao was left there talking to us, and he gave us a copy of their statement. [Ojiambo] was at the meeting, but he just slipped out and didn’t talk to us. [The police] were out there with the riot [gear] and a lorry. We were in the reception area and seated and we could see them [the police, below]. So the meeting has ended and we want to talk to them but Fred [Ojiambo] doesn’t talk to us. Laurence is left there talking to us and he has this copy of [a] statement they have decided to issue... I don’t know what really happened, but it appeared that not all the members wanted a statement issued...He shows us [the statement] and we take a copy. It’s not signed. And then they disappear. And we knew because it was not signed because Ojiambo was, perhaps, not cooperating. We knew the statement was not going to be issued. We took the liberty of issuing the statement and give [it] to the press.”

Q. Was it a critical statement?

TACTIC – use the press

[HR] A. “It was a statement condemning the arrest. So we issued the statement. We leaked it to the press [laughs]. And since it was not signed, we gave the press the names of the Council members who had attended the meeting because we had witnessed them leaving the meeting venue. So it was read on KTN [Kenya’s state-run? Television station; [?? verify name and state ownership or mgt.] that evening, and they really were furious: Fred and the others. In fact they were trying to disown it, that it wasn’t signed. But we were saying – I was ready to face anyone – because the Vice Chair [of LSK] had given us the statement.

I’m actually getting amused when I remember those days. It was quite something.

You know, the papers were good [in] those days.”

296 [HR TACTIC “The news was our activism. So whatever we were doing and the statement we were issuing were really being given prominence.”

[HR] “I represented Imanyara [in his 1990?? Arrest] once because he kept on getting arrested over his publication, the Nairobi Law Monthly. So we were representing him with G. B. M. Kariuki. Other lawyers would come and give support [in the case]. We filed a constitutional reference, which was filed under the name of G. B. M. Kariuki, a constitutional case, to challenge...[what?]. And it was being heard by Justice Dougdale [??] spelling] then and Ole Kaywa [??] who is now in the East African Court [? Name of court? I was asked to go to court...Mr. Imanyara didn't want the case to go on until Kariuki [got] well. They were really determined to go on with the matter. I had talked to Imanyara in Kenyatta National Hospital [where he had been chained to a bed as a detainee [??] being treated] and he had told me under no circumstances was I to proceed. If they are determined to proceed when we are not ready, then we abandon [the case]. So I just walked out of court and left the judge with this – after an exchange with the judge. So I remember the next day the headline was: Lawyer storms out of court. [??] date].

[IMPACT] And those things were helping, with all that publicity. And also it was revolutionizing the country without the government knowing, because people are seeing, Yes, you can actually stand up. The defiance was becoming infectious.

[THEME: Note: key theme developing here. Use of the courts to challenge the government, but use of the press to get the message out – Muite explains this, too. And the publicity helps galvanize the nation, showing that the government can be challenged, that standing up and saying no is an option. A number of interviewees said the role of the local press was critical in this process]

341: [IMPACT:] “And we started seeing now statements by citizens. You see a statement from Eldoret [up country] also echoing the need for multi-partyism; a statement from a different part of the country. People started speaking. The ripple effect – eventually out of all those activities and what the church was doing, and then the coming together of [Jeremoge Oginga [??] Odinga, [Martin] Shikuku and others – which was also through involvement of the lawyers' network.”

HR TACTIC: The ‘war’ room.

“The rendezvous was at Shamalla's [law office in downtown Nairobi]. And we still were the lawyers when these lawyers would get arrested. We used to meet almost every day. It was like a ‘war’ room to plan the activities of the next day.”

[Chess Game. Government, having failed to silence the LSK as an institution, now attempt to silence outspoken attorneys as individuals.]

360. “And at some stage the government started targeting us as individuals. In 1990 [??] I discovered I was being followed by the police and I didn't know. We used to meet every evening [at Shamalla's office]. When we realized now they would plant a police 99 outside this building [at Corner House].

[Shamalla] was destroyed by the ‘system’ [of government]. He was wooed into KANU and after that fizzled out.”

[end of side one]

[begin side two: Karua]

00 “Japheth [Shamalla] was good. He was an active participant.”

[OIA. Lawyers solicit help of international organizations in their battle over LSK freedom]

“We used his [Shamalla’s] office daily, even when the multi-partyism came. It was in his office that the politicians met. It was his telephone that everybody used; it was his fax that we were faxing New York [Amnesty? HRW?] before I bought my own fax, and other statements. It was really a ‘war room.’ And whenever one [of the lawyers] failed to come in the evening, frantic calls [were made] to find out [about them] because they could have been picked up [by police.]”

SA- TACTIC of government: Police surveillance of activist Karua discovered.

“But how we got to know was a very interesting way. We met in the evening at Pan Africa [hotel in Nairobi] for a drink, while discussing. In fact that day [which day?] we wrote a statement to the press [about LSK commenting on topical/political issues] which was hand-written. Imanyara, Beatrice Duta [??], myself and some others [who?]. The next day...a lady I had represented came to my office. And she told me she had just learned something from a taxi man that I am in danger. And she wanted to present that taxi man to present that story. I agreed. She brought the taxi man to my office. The taxi man related how the previous day he was hired by police from industrial area, a CID [Criminal Investigation Department] officer. And he was told - he and another taxi driver, because there were two taxies – they were told that they [CID] want to arrest me because I am subversive, I’m ‘Mwakenya and therefore they would need the two taxies to block me. [‘Mwakenya was an underground movement of uncertain size blamed by the Moi government during the 1980s, mostly, of trying to overthrow the government. Many alleged Mwakenya defendants were tortured in police cells in downtown Nairobi in the late 1980s and into the early 1990s: see HRW and Amnesty reports.]

So for two days they followed me without [my] knowing. And I believed him because he mentioned all the places I had been on the two days. And he told me I was a terrible driver because I would lose them. And exactly how I drive, he described. And he told me how one day they followed me; they wanted to know my home. They followed me; I entered a home and they thought it way my home, but it was a hair salon – a lady doing hair in her home. So when they realized it was a salon, they backed off and left. So this day was the second day. They now follow us [the small group of activist attorneys who coordinated their steps via the ‘war’ room.] And they were waiting, so that when they [the lawyers] are leaving I am now alone. And one car would go in front and block me. God knows [what they were planning].”

[SA- Police surveillance traced to the President’s office.]

“So what happened is that when they parked their cars at Pan Africa [Hotel] to wait for us at car parking, one policeman was going from one car to the other, I think to consult [with] his colleagues, because they were in two cars. So the security at Pan Africa could not allow them; they thought they were thieves, carjackers or something. So they called Kilimani police [at a nearby station]. Killimani police, I understand, came to the Pan Africa car park with a lorry. They blocked these two taxies, arrested the two police officers...And when he is arrested and he goes now to Kilimani, he is put in the cells. He is protesting, saying he is on duty. And the officer in Killimani was [telling] him: if you have come outside your area for an operation, your boss is supposed to have notified me. As far as I am concerned, you are a criminal preparing to commit and offense. The man insisted. He now disclosed he

had been sent from State House [President Moi's office] and he gave the name of a person at State House and a number and insisted the person be called. At that juncture, that police officer was released, but they had already noted the incident in the occurrence book. He was released and the taxi men were also released – after police spoke to someone in State House. [??] [She learned this through a contact within the police whom she had known during Karua's employment as a magistrate or judge in Nairobi.]. She confirmed to me, yes, this is a truce incident, it's recorded. She told me she also worried for me and was going to look [out?] for me. Because the moment people want to arrest you, not in the normal manner but to isolate you, they could have taken me elsewhere. They could have hijacked me, gone and brutalized me, you see. And it would look like my colleagues whom I was with in the evening or someone else. You can be taken from Nairobi, driven in your car towards Narkuru [another city] or something.”

[SA- TACTIC of government: Police surveillance of activist Karua discovered.]

“What we did, we went to the ‘war’ room that day, very worried, all of us, and it was agreed that Perhoze Nowrojee writes a letter to the Commissioner of Police, make it public to the press, the Attorney General, narrating the incident, giving the number...of the officer, talking of the incident...and also mention the involvement of someone in State House whom we don't know, and to tell the police and let them know that should anything happen to me, they will be squarely to blame. **We used to protect ourselves by ‘shouting’ publicly. So that was a shout to the public.** [The attorneys also defended themselves by] circulating statements to the human rights groups, organizations. So that incident ended. It now confirmed to us that we needed to be careful.”

66.[SA- TACTIC? Fear of government poisoning of activist lawyers in 1990.]

“We were informed by a friendly waiter at the Hilton [Hotel in downtown Nairobi] that the police had been there bugging them, telling them to say what is the favorite meal to eat, that each one of us [the activist lawyers] takes. And when people start finding out in a restaurant what you are eating, you get worried. [The ones asking the questions were] police: Special Branch. A waiter said they identified themselves and they were insisting they be told. People at the said they wouldn't – they had no record of what customers eat. We used to eat quite a lot at the Hilton at the café downstairs. One day we went there just like we normally did; and we had been there the previous day. [It was near the ‘war’ room in Shamalla's office]. So this day the waiter comes and tells us: look, you guys had better be careful. Yesterday after you left...a police officer came and introduced himself and insisted that he's on duty and that he wants to know firstly to see the bill [which can show what was ordered] you people had paid, which they were shown a copy. And then [the officer] started asking questions what are the favorite foods that we eat. And they asked about us, and they also asked about a politician. They were not in uniform; these are plain clothes [officers]. And the guy [waiter] was convinced that the people quarreled, telling him that the people at the Hilton were being arrogant while the police had already been able to collect similar information at the Intercontinental [Hotel in Nairobi]. When we learned that such inquiries had been made, we stopped now being consistent in where one eats and trying also to make sure we go home sometimes for lunch, because [otherwise] you are offering yourselves [open to danger]. My suspicion is that if you are asking what I eat, probably you want to [arrange a] set up and poison me. It [poisoning] has happened, and we fear it. I mean its bizarre for someone to go and ask what you eat. [This happened in] 1990.

[Note: both of these incidents, the surveillance of Karua and the suspected poisoning plans came in a year of heightened tensions between human rights activists and the government, the year before

President Moi agreed to hold multi-party elections and end Kenya's long experience with one-party rule.]”

94: [Imanyara is arrested but Karua gives chase.

SA- TACTIC: government: detain the most outspoken dissidents. Kenya had a detention law until 1997.

HR: TACTIC: Keep alert for the safety of fellow activists; plus spontaneous, courageous act to try to protect an arrested member of the group.]

“One other interesting event I can remember is a time we learned that... that Imanyara's office has been surrounded, he's under siege and they are trying to arrest him. We rushed to his office. The police, when they learned we had arrived took him out through the back door. And when we were in the office, knocking and insisting they open, we learned they had left in a police vehicle. When we learned they had left, I personally went down [stairs] hurriedly. I found his wife, Florence, who looked dejected. And she told me they had gone this way. I didn't have a car because I had come walking from my office...I took her keys, jumped into her car, because she showed me the car and it was just leaving. I gave chase... You don't stop to think... So they would jump traffic lights, I would jump them, too. They realized they were not going to lose me and I was right on their tail. So they eventually ended up at Kileleshwa Police Station after a drive through town, through the [housing] estates they ended up at the Kileleshwa Police Station. It was just like twenty minutes, and there wasn't traffic. These days I don't drive fast, but [then] I could... So they entered Kileleshwa Police Station with me hot on their heels. They ran to the police station, and as I was trying to talk to Imanyara – because he was in the car with other police officers – the senior of them who had gone to the police station came out, entered the car and before I knew it, they were reversing, to leave. As I tried to enter mine [her car], the [officer] who had come with him grabbed my arm and took the keys forcefully from me, twisted my arm... So he snatched the keys from me, and the [police] car left. And I was left telling him I'm going to sue him and sue everybody because they can't do that to me. They're not arresting me they just take my keys. So after about five minutes, because I was making a lot of hell; I was quarrelling [with] them; also I was following him and trying to take the keys from him. I think he realized I was becoming a nuisance: he gave me the keys back after five minutes. And by the way, he took them rather violently. The button of my jacket was torn off. So I entered the car wondering where to go. I drove towards town and then I clicked: they could have gone to his place, to his home. So I drove toward [his home]. And sure enough: when I got to the court where they lived, I saw a vehicle block me which looked like a matatu [mini bus taxi]. The police now had reinforcements. They suspected I may follow there, too. So they used a vehicle to block the road. I went on the pavement and I arrived at his house. When I arrived at his house the interesting thing – there were four policemen. They hurriedly left with him without finishing the search. I now was the monster [laughs]. They didn't want any witnesses or any interference. So they left and went away with him. And now [they] completely blocked the road; so I could only leave after about half an hour. So I was not able now to follow again... Later, Imanyara was to tell me that when I was going to his house... they quickly said, 'She's coming; she's coming' and they all ran. He also thought it was very funny. You'd have thought [I] was an army [laughs]. It's not something I had planned. So we had some very interesting times [trying to advance and protect human rights in Kenya in the early 1990s [laughs]. If one were to think about it you'd actually laugh.

I sued that police officer [the Superintendent who violently grabbed her keys at police station]. I sued him by name and I sued the Attorney General. The case was finally heard in 1993. Imanyara testified on my behalf [as a witness]. I was claiming damages for the harassment and also for spoiling what I was describing as my designer suit, ripping off a button from it, which button is irreplaceable.

Anyway, I was awarded damages. I was awarded 83,000 [Kenya Shillings]. The court was not bold enough to give punity, but that was OK. Then I refused to go after the Attorney General for the money. I took out warrants of attachment [against the property of the offending police Superintendent]. So the auctioneer went to his police house and [made] claims on his refrigerator and [other] things. There were two defendants, Superintendent Busie Nei [her spelling] and the Attorney General, his employer. You can choose not to go for the employer, although he is vicariously liable. I went for him [the Superintendent] because I want him to know there is the law. I proclaimed upon his goods. I attached him because the government didn't pay...So that meant the Busie Nei had to go and camp at the office of the President to try to get us the check to avoid the carrying away of his goods. And that really was a good deterrent...He camped there for a week until the check was written. So at least he was forced to feel a bit of what I felt.

And in another instance [in 1994] in my constituency when the police were breaking up my meeting, I dared anyone to touch me – and I'll sue them like I sued Superintendent Busie Nei. Police wanted to arrest me. When I quoted to them the case of Busie Nei there was nobody to touch me and put me in the police vehicle [laughs]. So to some extent it [her suing the police in the Imanyara case] did work [to keep the police in line]. Which leads me to the belief that if we stood up for our rights by suing as many times – even if the courts may not be just and may not award. The overload of cases would force the government to sit down and change their policy of deliberately abusing the law.”

[SA-HR: The victims attacks (suing the police) Karua sues the police after she is assaulted by them. And that's not the only time I was sued. Fighting back surprises police not used to resistance.]

“And that's not the only time I have sued. I was beaten up by police in 1991 when I went to visit the mothers who were camping [in a year-long strike to win the release of political prisoners, many of whom had been tortured into confessions during the late 1980s after being accused of trying to overthrow the government. The mothers began their protest in Uhuru Park but after a few days were forcibly removed by police who earlier in the day attacked the supporters and even the mothers themselves with tear gas and batons. Some of the mothers exercised an old tradition curse on the police by stripping naked in front of them. But after they were removed from the Park they reassembled in the basement of All Saints Cathedral, where attorney Karua went to visit them one day.]

The police had surrounded the church. I went via the Pastor's house who was Rev. Njenga [??] [full name and spelling??] I was wearing casual; I was in trousers and a flowered blouse. The police descended on me without a question, raining kicks and blows on me. Three, four of them each kicked me once. I reacted so quickly. I hit one with my bag. I scratched two of them on their face and pulled...my wild reaction made them stop the assault because they are not used to people resisting.

I sued again. I didn't know their names because I couldn't take the force numbers, force numbers of gun-wielding people who suddenly attack you. They were armed with G-3 rifles. I was so upset, actually; I was telling them: “shoot,” because I refuse to back down, I refuse to go back. I insisted on going up to where the mothers were and talk to them. And I actually went and I talked to them. You know, you get pretty upset to be humiliated for no good reason.”

[Striking mothers fail to empathize with Karua when police beat her.

THEME: vulnerability and humanity of activists, who also need some understanding. Gibson appreciates those who came up and said keep at it; Khamwina was the same.]

“I was so disappointed with the mothers who stayed [in the church basement without coming to her aid] that day. I've been assaulted. I'm telling them I've been assaulted while coming here: all they

are telling me [is] ‘fight for our rights,’ telling me their needs and how to fight. You expect fellow human beings...to ask: ‘How are you feeling? Sorry;’ to first find out what is happening to me, not to completely telling me about their cause and I’ve just been assaulted. Actually it discouraged me and I stopped [visiting the mothers]; I withdrew from there. I felt they had not empathized with my situation. I really felt bad.

[Suing the assailants at All Saints Cathedral.]

“I sued the OCS of Central [Nairobi Police]...because when I learned that they were from Central Police Station, I later confronted the OCS and asked him why his officers were behaving that way. Since they refused to give me the force numbers of his officers, [they are] his men, so I sued him and the Attorney General. But unlike Busie Nei, I didn’t go for his things: the government paid [her court-awarded damages when she won her case in 1995.]”

[Short definition of a human rights activist:]

“I don’t sleep on my rights [laughs]. And I also help my constituents not to sleep on their rights. Actually I am pursuing three payments on behalf of my clients who were brutalized in 1994. One is assault; the other three are false arrest. And one is a lady – when they couldn’t get the husband, they went and broke her door at night. Such indecency! But the husband will go looking for her and they can arrest him.”

[Karua cited her constituency as a Member of Parliament: Gicugu in Kirinyanga district.]

[She first joined FORD then went to Ford Asili.

But, she contends, FORD Asili rigged her out of party elections. Then in Oct. 92 she joined DP. I won the nomination and competed against the man in whose favor they [she claims it was FORD Asili] had rigged [the election]. And I floored him. [She was elected; and re-elected in 1997 and was running again in 2002]

End of transcription